IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 952 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

KATHI JILU LAKHU

Appearance:

MR.K.C. SHAH A.P.P. for Petitioner

MS SUDHA R GANGWAR for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE D.P.BUCH

Date of decision: 14/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. The acquittal of the respondents of the offences punishable under Section 302 read with Section 120 B of Indian Penal Code and Section 135 of the Bombay Police Act recorded by the learned sessions Judge, Amreli vide judgment dated May 29, 1985 rendered in Sessions Case No.1/985 and 14/85 is subject matter of challenge in the present appeal, which is filed under Section 378 of the Code of Criminal Procedure.

2. The complainant Pragjibhai Devrajbhai is an agriculturist and resides at village Sanosara, District Amreli. The incident in question took place on September 7, 1985. On that day at about 12 noon when the complainant and his father were at their residence, one Mahesh Kanubhai came to their house and informed deceased Devrajbhai that some cows were grazing in his field and if he was inclined to drive them out, he should go to his field. According to the prosecution, on receipt of this information deceased Devrajbhai went to his field to drive away cows. In the farm of deceased groundnut crop was standing. At about 2.30 p.m. one Arvind Kanji informed complainant Pragjibhai that his father Devrajbhai was lying dead at the outskirts of the field. The complainant and others therefore went to the field and found the deceased lying dead there. Thereafter complaint was lodged by Pragjibhai Devrajbhai with Amreli Taluka Police Station. The First Information Report was investigated by Kanubhai Jorubhai Zala who was P.S.I. at Amreli Taluka Police Station. At the conclusion of the investigation, the respondents were chargesheeted for the offences punishable under Section 302 read with Section 120 B of the Indian Penal Code and Section 135 of the Bombay Police Act. As the offence punishable under Section 302 is exclusively triable by Court of Sessions, the case was committed to Session Court Amreli for trial, where it was registered as Sessions Case No.1/85 and 14/85. The learned Sessions Judge had framed charge against the respondents for the offence punishable under Section 302 read with Section 120 B and 34 of the Indian Penal Code as well as Section 135 of the Bombay Police Act. The charge was read over and explained to the respondents who pleaded not guilty to the same and claimed to be tried. Therefore, the prosecution examined; (1) Vinodrai Prabhulal Raval, who had performed autopsy on the dead body as P.W.1 at Exh.11, (2) Pragjibhai Devrajbhai, the complainant as P.W.2 at Exh.13, (3) Dehabhai Bhanbhai as P.W.3 at Exh.14, (4) Mahesh Kanubhai as P.W.4 at Exh.15, (5) Babubhai Devraj as P.W.5 at Exh.16, (6) Kadva Premjibhai as P.W.6 at Exh.17, (7) Ramji Virji as P.W.7 at Exh.24, (8) Madhu

Virji as P.W.8 at Exh.25, (9) Mansukhlal Ratilal Mehta, Circular Inspector who prepared map of scene of offence as P.W.9 at Exh.26, (10) Bhimjibhai Meghbhai as P.W.10 at Exh.28, (11) Dhanji Bhagwan as P.W.11 at Exh.32, (12) Parbatbhai Bhadabhai as P.W.12 at Exh.34, (13) Rafik Siddik Dalla as P.W.13 at Exh.37, (14) Gulabsingh Motibhai Wagadi as P.W.14 at Exh.39, (15) Jagdishnarayan Manchharam as P.W.15 at Exh.41, (16) Badubhai Dadabhai as P.W.16 at Exh.42, (17) Tulsidas Tribhovandas as P.W.17 at Exh.43, (18) Laljibhai Arjanbhai as P.W.18 at Exh.44, (19) Gajanand Rangjirao as P.W.19 at Exh.45 and (20) Ganubhai B. Zala Investigating Officer as P.W.20 at Exh.49 and also produced documentary evidence such as postmortem notes of the deceased, complainant filed by Pragjibhai, panchnamas, inquest report etc., to prove its case against respondents. After recording of evidence of prosecution witnesses was over, the statement of respondents were recorded under Section 313 of the Code of Criminal Procedure. In their statements the respondents denied the case of prosecution but did not examine any witness in their defence. On appreciation of evidence led by the prosecution, the learned Sessions Judge has acquitted the respondents vide judgment dated May 22, 1985, giving rise to the present appeal.

3. Mr.K.C. Shah learned A.P.P. submitted that the evidence of witness Dehabhai Bhanabhai establishes that on the date of incident respondent No.3 had knife with him whereas respondent No.4 was armed with a stick and they had asked him to inform deceased Devrajbhai that cows were grazing in his field and therefore the case of the prosecution that respondent No.3 had caused knife injuries to the deceased whereas respondent No. 4 had caused injuries to the deceased with a stick ought to have been believed by the learned Sessions Judge. The learned counsel for the state read out extensively the testimony of eye witness Madhu Virji and pleaded that Madhu Vriji being closely related to the deceased would not involve the respondents falsely and would not allow the real culprits to go scot free and therefore his evidence ought to have been accepted by the learned Sessions Judge. What was claimed by the learned counsel for the State was that the evidence of eye witness Madhu Virji read with discovery panchnamas reasonably establishes that respondents had conspired to murder the deceased and respondent Nos.3 and 4 had committed murder of deceased in furtherance of the said conspiracy and therefore the appeal should be accepted. The learned counsel for the respondents has supported the decision impugned in the present appeal and urged that as no case is made out by the prosecution against any of the

respondents the appeal should be dismissed.

4. We have gone through the entire evidence on record and considered the submissions advanced at the Bar. The fact that deceased Devrajbhai died a homicidal death is not in dispute which is amply proved by the evidence of Doctor Vindorai Raval as P.W.1 at Exh.11. However, the question remains whether any of the respondents can be held liable for murder of Devrajbhai. Pragjibhai who is the son of the deceased and who is complainant has categorically stated in his evidence that he had given names of the respondents as accused merely on suspicion. It is not his case that he had witnessed the incident in question. Therefore his evidence is of no help to the prosecution. Witness Dehabhai Bhanabhai has claimed in his evidence that on the date of incident he had seen respondent No.3 with a knife whereas respondent No.4 was armed with a stick but except stating that the respondent Nos.3 and 4 were so armed, he has not stated anything further which would implicate either the respondent Nos.3 and 4 or any of the respondents with the crime in question. Child witness Mahesh Kanubhai merely states that he had informed the deceased at the instance of Dehabhai that cows were grazing in his field and if he was inclined to drive them away he should go to his field. The fact that deceased had gone to his field for the purpose of driving away the cows in his field is not in dispute but evidence of witness Mahesh Kanji in no way connects any of the respondents with the murder of the deceased. Babubhai Devraj who is son of the deceased is a formal witness and does not throw any light on the question as to how the incident took place or as to who was responsible for causing death of his father. Witness Kadva Premji has claimed in his evidence that on previous day he had found all the respondents sitting in the wadi of accused No.1 who were talking inter se and on seeing him the respondents had stopped talking inter se. The evidence of this witness makes it clear that the respondents had assembled on previous day in the wadi of respondent No.1 but this witness could not inform the Court as to what was the nature of talk and whether any conspiracy was hatched by any of the respondents to kill the deceased. Ramji Virji as P.W.7 at Exh.24 has not supported the prosecution case at all and was treated hostile. The prosecution witness Madhu Virji is the only witness who claims to have witnessed the incident. On going though his evidence we find that he is closely related to the deceased i.e. he is nephew of the deceased. In this evidence this witness claims that he had seen respondent No.3 inflicting blows on the deceased with a knife whereas respondent No.4 had caused injuries

on head of the deceased with a stick. However the medical evidence does not indicate that the deceased had sustained any head injuries by hard and blunt substance. Thus evidence of this witness stands contradicted by medical evidence. Moreover this witness claims that because of the ghastly incident he was scared and had slept for 3 hours at his house and had come out only after learning that P.S.I. was in village. Even if it is assumed that the witness was scared on seeing the incident it is difficult to believe that he would not disclose the names of the assailants to his close relatives. Admittedly, this witness had not disclosed the names of any of the respondents to any of his close relatives at all. Moreover, this witness claimed before the Court that his statement under Section 161 was recorded by the Investigating Officer on the date of incident, but the evidence of Investigating Officer falsifies him and the evidence of Investigating Officer establishes that his statement was recorded on the next date that is after filing of the F.I.R. by Pragjibhai. This witness had admitted in his testimony before the Court that when he was going to his residence from the scene of incident several persons had met him on way, but he had not disclosed anything about the incident to any one. In our view the conduct of this witness is most unnatural and his claim before the Court that he had witnessed the incident does not inspire confidence of the Court. In State of Orissa Vs. Mr.Brahmananda A.I.R 1976 S.C. 2488, the Supreme Court has ruled that where in a murder case the entire prosecution case depends on the evidence of person claiming to be eye witness and this witness does not disclose the name of the assailants for a day and half after the incident and the explanation offered for non-disclosure is unbelievable then such non-diclosure is a serious infirmity which destroys the credibility of the evidence of the witness and normally evidence of such witness should be rejected as trustworthy. In our view, the learned Sessions Judge who had opportunity of observing demeanor of witness has rightly disbelieved the testimony of this witness.

5. The other witness are formal witnesses like panch witness, investigating officer etc., and therefore we do not think it necessary to discuss their evidence in detail in this judgment. This is an acquittal appeal in which the Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go the root of the matter and strike a vital blow on the prosecution case. In such a case it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of learned Judge

who had opportunity to observe the demeanor of witnesses. As we are in general agreement with the view expressed by the learned Judge, we do not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Session Judge, and in our view, expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the present case. This is so, in view of the decisions rendered by the Supreme Court in (1) Girija Nandini Devi & Ors. Vs. Bijendra Narain Chaudhary, A.I.R. 1967 S.C. 1124, and (2) State of Karnataka Vs. Hema Reddy and anothers , A.I.R. 1981 S.C. 1417. Although in an appeal from an order of acquittal, the powers of the High Court as appellate Court to reassess the evidence and reach its own conclusions are as extensive as in an appeal against an order of conviction, yet, as a rule of prudence, the appellate Court would always give proper weight and consideration to such matters as (i) the views of the trial Judge as to the credibility of the witnesses; (ii) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (iii) the right of the accused to the benefit of any doubt; and (iv) the slowness of an appellate Court in disturbing finding of fact arrived at by a Judge, who had the advantage of observing demeanor of the witnesses. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondents. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Judge in order to convince us to take the view contrary to the one already taken by the learned Judge. The appeal, therefore, cannot be accepted and is liable to be dismissed.

6. For the foregoing reasons, the appeal fails and is dismissed.

(J.M. Panchal, J).

(D.P. Buch, J).

/phalguni/